

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PAUL A. SCOTT, <sup>1</sup>	§
	§ No. 494, 2010
Petitioner Below-	§
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
LAURI W. SCOTT,	§ in and for Sussex County
	§ File No. CS05-01849
Respondent Below-	§ Petition No. 05-17025
Appellee.	§

Submitted: February 11, 2011

Decided: April 27, 2011

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 27<sup>th</sup> day of April 2011, after careful consideration of the opening brief and the record on appeal,<sup>2</sup> it appears to the Court that:

(1) The appellant, Paul Scott (“Husband”), filed this appeal from two orders of the Family Court. In the first order, dated October 26, 2009, the Family Court denied Husband’s motion to set aside the parties’ revocation of their premarital agreement. The second Family Court order, dated July 16, 2010, divided the parties’ marital estate equally. We find no merit to the issues raised on appeal. Accordingly, we affirm the Family Court’s judgment.

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<sup>1</sup> The Court assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

<sup>2</sup> The appellee did not file an answering brief in response to the opening brief. Accordingly, the Court informed the parties that the matter would be decided on the basis of the opening brief and record below.

(2) The record reflects that Husband and Lauri Scott (“Wife”) were married on November 5, 1994. It was the second marriage for both parties. Prior to their wedding, the parties entered into an agreement, dated September 21, 1994, providing for the division of their respective premarital assets should the marriage end in divorce. The most significant asset was Husband’s premarital real estate. Wife waived and released all statutory and common law rights as a spouse in Husband’s property. Wife also gave up any right to any appreciation in the value of the property owned separately during the marriage. The agreement provided that it could not be “amended or revoked except by an instrument in writing, signed by the parties and mutually acknowledged, expressly modifying or revoking the provisions” thereof.

(3) In May 2001, the parties went to see an attorney, Lisa Andersen, about reviewing their financial arrangements, drafting and/or modifying wills and health care directives, and obtaining powers of attorney in favor of each other. Andersen previously had represented Wife in custody proceedings in 2000. Andersen testified that the parties came to her expressing that they had been happily married for several years and that they want to change their legal rights at death and divorce due to the premarital agreement. Initially, Andersen testified, the parties discussed modifying their 1994 premarital agreement but ultimately decided to revoke the agreement. Accordingly, in addition to other documents that she drafted for them, Andersen drafted a revocation of the premarital agreement.

The revocation, a single-page document, provided that the parties intended to revoke and rescind their prior agreement in its entirety and that they understood “their rights and obligations to one another derived by virtue of their marriage are hereby reinstated in full” as if the September 21, 1994 premarital agreement “were never entered.” Both parties signed the revocation on June 15, 2001. In 2004, the parties decided to refinance Husband’s premarital home. At the time of the refinancing, Husband placed Wife’s name on the deed of the property, and the parties took a mortgage on the property in both of their names.

(4) Husband filed a petition for divorce in May 2005, which was granted in November 2005. Thereafter, Husband filed a motion seeking to set aside the parties’ revocation of the premarital agreement. Husband argued that Wife conspired with Andersen to have him revoke the premarital agreement. Husband testified at trial that he did not read the 2001 revocation and that he believed the document he had signed in 2001 merely gave Wife a life estate in the premarital home without affecting any other aspect of their premarital agreement. Husband argued that the revocation should not be enforced because there was no consideration for the contract, because there was collusion between Wife and counsel, and because counsel violated the Delaware Lawyers’ Rules of

Professional Conduct, among other reasons, by failing to advise him to obtain independent representation.<sup>3</sup>

(5) After a full hearing, the Family Court found no merit to Husband's motion to set aside the parties' revocation of the premarital agreement. The Family Court noted that the revocation of the premarital agreement did not, as Husband argued, require consideration.<sup>4</sup> Moreover, the Family Court found that Husband did not present evidence of collusion between Wife and Andersen. Finally, the trial court concluded that Husband's own testimony that he neither read, nor asked questions about, the revocation before he signed it weighed against a finding that Andersen had committed any professional malpractice requiring revocation of the agreement. The Family Court considered all of the evidence and concluded that Husband had wanted the revocation in June 2001 but had simply changed his mind after the marriage ended.

(6) Furthermore, the Family Court found that Husband's 2004 conveyance of title to his property from himself to himself and Wife jointly created a rebuttable presumption that Husband had given Wife an undivided interest in the

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<sup>3</sup> Husband filed a separate legal malpractice action against Andersen in the Delaware Superior Court in October 2007. The Superior Court dismissed Husband's lawsuit on the ground that he had failed to file it within the six-year statute of limitations period. This Court affirmed that decision on appeal, holding that Husband was bound by the six-year limitations period because he was not a blamelessly ignorant plaintiff who suffered an inherently unknowable injury. *See [Scott] v. Anderson*, 2009 WL 590381 (Del. Mar. 9, 2009).

<sup>4</sup> DEL. CODE ANN. tit. 13, § 325 (2009) (providing that "[a]fter marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. Such amended agreement or revocation is enforceable without consideration.").

property.<sup>5</sup> This presumption was further supported by the parties' execution of a mortgage on the property in both of their names. The Family Court, therefore, concluded that Husband's conveyance of the property to himself and Wife converted the premarital property into marital property subject to equitable division. Following a separate hearing, the Family Court divided the marital estate on a 50/50 basis.

(7) In his opening brief on appeal, Husband argues that Family Court's decision denying his motion to set aside the revocation of the premarital agreement is not supported by the evidence and thus is both an abuse of discretion and legally erroneous. Husband also argues that the Family Court erred in dividing the entire marital estate equally.

(8) On appeal from a decision of the Family Court, we review the facts and the law, as well as the inferences and deductions made by the trial judge.<sup>6</sup> We review the Family Court's conclusions of law *de novo*.<sup>7</sup> If the law was correctly applied, we review the Family Court's decision for abuse of discretion.<sup>8</sup> We will not disturb findings of fact unless they are clearly wrong and justice requires them

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<sup>5</sup> *Hanby v. Hanby*, 245 A.2d 428, 430 (Del. 1968).

<sup>6</sup> *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

<sup>7</sup> *Forrester v. Forrester*, 953 A.2d 175, 179 (Del. 2008).

<sup>8</sup> *Id.*

to be overturned.<sup>9</sup> This Court will not substitute its own opinion for the inferences and deductions made by the trial judge if they are supported by the record.<sup>10</sup>

(9) After a careful review of the record below and Husband's arguments on appeal, we find it manifest that the judgment below should be affirmed on the basis of the Family Court's well-reasoned decisions dated October 26, 2009 and July 16, 2010. The record supports the Family Court's conclusion that the parties' revocation of their premarital agreement was valid and that Husband's conveyance of title to the property to himself and to Wife jointly converted the premarital property into marital property. Moreover, we find no error in the Family Court's valuation of the property or in its conclusion, after considering the statutory factors,<sup>11</sup> that the marital estate should be evenly divided between Husband and Wife.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>9</sup> *Id.*

<sup>10</sup> *Solis v. Tea*, 468 A.2d at 1279.

<sup>11</sup> DEL. CODE ANN. tit. 13, § 1513(a) (2009).